

Republic of Liberia, by and thru the Ministry of Justice, represented by Attorney General Kabineh Ja'Neh Respondent versus **Melee I. L. Kermue** and **Wilma Bailey** a/k/a **Wilma Dennis** of the City of Monrovia, Liberia Movants

APPEAL FROM THE FIRST JUDICIAL CIRCUIT COURT, CRIMINAL
ASSIZES "A," MONTSERRADO COUNTY.

Heard: June 28, 2007 Decided: August 10, 2007

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

On 21 October 2005, the United States Government, through the United States Embassy accredited near this capital, requested the Liberian Government to extradite Melee I. L. Kermue and Wilma Bailey a/k/a Wilma Dennis, the movants, to the United States on the criminal charge of Health Care Fraud allegedly committed by the movants while they were *in* the United States. Consistent with Criminal Procedure Law, 1 L.C.L.Rev., tit. 2, § 8.5(1) (1973), the requisition for the surrender of the movants was transmitted to the Minister of Foreign Affairs through a diplomatic note. The requisition was accompanied by documents certified by the Honorable Condoleezza Rice, Secretary of State of the United States, showing that the movants were substantially charged with having committed an extraditable offense.

Among the documents accompanying the requisition were a copy of the Extradition Treaty between the United States of America and Liberia, United States Treaty Series no. 955, signed at Monrovia, on 1 November 1937, and the following Indictment:

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF OHIO EASTERN DIVISION

**UNITED STATES OF AMERICA VS. HOPE HOME HEALTH CARE, INC.
MELEE IL KERMUE WILMA BAILEY** NO: 2:05 cr 194 JUDGE SARGUS 18
U.S.C. § 1347 Health Care Fraud (Count 1) 18 U.S.C. § 1956(h) Money Laundering
Conspiracy (Count 2) 18 U.S.C. § 2 Principal Defined (Counts 1 & 2)

INDICTMENT

THE GRAND JURY CHARGES:

COUNT 1 HEALTH CARE FRAUD

For all periods material to this Indictment;

1. From on or about July 13, 2002, through and including October 5, 2004, the exact dates being unknown to the Grand Jury, in the Southern District of Ohio and elsewhere, defendants Hope Home Health Care, Inc., Melee IL Kermue and Wilma Bailey unlawfully, wilfully and knowingly: 1) executed and attempted to execute a scheme and artifice to defraud a victim health care benefit program and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises (count 1); 2) conspired to commit money laundering by using funds to promote illegal activities, concealing the nature and source of illegal proceeds and use of illegal proceeds (Count 2); and 3) committed such acts as principals (Counts 1 and 2).

THE DEFENDANTS

2. Defendants Melee IL Kermue and Wilma Bailey operated defendant Hope Home Health Care, Inc. ("Hope") which was incorporated in the State of Ohio on March 1, 2002, and operated primarily in the Southern District of Ohio. Defendant Melee IL Kermue was the owner, Chief Executive Officer and registered agent and defendant Wilma Bailey was the Office Manager and Administrator for defendant Hope.

3. Defendant Hope was a home health agency that purported to provide skilled nursing services and daily living services to patients covered by the Ohio Medicaid Program ("Medicaid"). In turn, defendant Hope, by and through the other defendants, billed Medicaid for services it claimed to have provided.

THE VICTIM HEALTH CARE PROGRAMS

4. Defendants Hope, Kermue, and Bailey caused bills to be submitted to [Medicaid] for services claimed to have been provided to covered patients for home health services. Attached and incorporated into this Indictment is "Attachment A," serving as the Fed.R.Crim.P. 12.4 Disclosure Statement describing the victim. The Medicaid Program is called herein the "Victim Health Care Program." Medicaid was a Health Care Benefit Program as that term is defined in 18 U.S.C. § 24.

5. The Victim Health Care Program, Medicaid, used written claim forms and electronic billing processes to establish the validity of health care claims entitled to payment. Medicaid only paid for covered services and services actually provided. A health care provider who submitted a claim to Medicaid certified that the procedure was actually rendered to the patient as documented.

6. Health care claim forms contained certain patient information and procedure billing codes and identified skilled nursing services provided. By designing a certain code, the home health agency provider verified to Medicaid that a given treatment was actually rendered. These treatment billing numbers were well known to the medical community and providers. The service billing numbers described skilled nursing services and daily living services in the language that the providers themselves use. Such services were universally billed by home health agencies to Medicaid with the code Z8001, which designated a skilled nursing service. Medicaid established payments based on the skilled nursing services code billed by the home health agency provider and the amount of time required for each visit.

THE SCHEME

7. From on or about July 13, 2002, through and including October 5, 2004, the exact dates being unknown to the Grand Jury, in the Southern District of Ohio, defendants Melee IL Kermue and Wilma Bailey committed health care fraud by and through defendant Hope by causing bills to be submitted to Medicaid for skilled nursing and home health services which were not rendered or performed.

8. It was part of the scheme that defendants Kermue and Bailey added fictitious times and dates of service creating fraudulent bills for legitimate patients, who in fact received some skilled nursing services. Fraudulent bills included services claimed to be rendered in the patients' home[s] when in fact such patients were hospitalized.

9. From on or about March 7, 2003, to April 9, 2003, in the Southern District of Ohio, defendants Hope Home Health Care, Inc., Melee IL Kermue and Wilma Bailey knowingly and wilfully and with intent to defraud, executed or attempted to execute a scheme or artifice to defraud Medicaid and obtained money or property owned by, or under the custody and control of Medicaid by means of materially false or fraudulent pretenses, representations, or promises in connection with delivery of or payment for health care benefits, items or services, by causing a bill to be submitted to ODJFS, which ran the Medicaid program, for skilled nursing services rendered to M.A., an individual insured under the Ohio Medicaid Program, when in fact, such services were not performed by defendants or their employees.

In violation of 18 U.S.C. §§ 1347 and 2.

COUNT 2 MONEY LAUNDERING CONSPIRACY

1. The Grand Jury incorporates by reference those allegations contained in paragraphs 1 through 9 of Count 1 of this Indictment.

2. From on or about March 13, 2002, through and including July 21, 2004, the exact dates being unknown to the Grand Jury, in the Southern District of Ohio, defendants Hope Home Health Care, Inc., Melee IL Kermue and Wilma Bailey, did knowingly and wilfully combine, conspire, confederate and agree with each other and diverse persons, both known and unknown to the Grand Jury, to

(1) conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, withdrawing funds from a corporate account, in the form of currency, then wire transferring the proceeds to Monrovia, Liberia, which involved the proceeds of a specified unlawful activity, that is health care fraud, with the intent to promote the carrying on of specified unlawful activity, to wit health care fraud, and that while conducting and attempting to conduct such financial transaction knew that the property involved in the financial transaction, that is monetary instruments, represented the proceeds of some form of unlawful activity, and;

(2) did further knowingly engage and attempt to engage in a monetary transaction by, through, or to a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000, that is withdrawal of monetary instruments totaling \$53,374.25, such property having been derived from a specified unlawful activity, to wit health care fraud.

OVERT ACTS

3. In furtherance of the conspiracy, and to effect the objects thereof, at least one of the following overt acts, among many others, was committed in the Southern District of Ohio:

3A. On or about August 12, 2003, defendant Melee IL Kermue purchased a 2003 Hummer H2 for \$53,374.25, with two checks written from a corporate account of defendant Hope Home Health Care, Inc, and caused the vehicle to be registered in the name of Hope International Mission.

3B. On or about January 22, 2004, defendant Wilma Bailey structured two (2) wire transfers to defendant Melle IL Kermue in Monrovia, Liberia with \$10,430 in U.S. currency withdrawn from a corporate account of defendant Hope Home Health Care, Inc.

3C. On or about May 26, 2004, defendant Wilma Bailey structured two (2) wire transfers to Monrovia, Liberia with \$11,500 in U.S. currency withdrawn from the

corporate account of defendant Hope Home Health Care, Inc., with defendant Melle IL Kermue listed as the recipient of both wire transfers.

In violation of 18 U.S.C. §§ 1956(h) and 2.

A TRUE BILL

(sgd.) FOREPERSON

GREGORY G. LOCKHART UNITED STATES ATTORNEY

GARY L. SPARTIS DEPUTY CRIMINAL CHIEF

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN MY OFFICE ON September 15, 2005

JAMES BONINI, CLERK

September 15, 2005

On 25 October 2005, George W. Wallace, Jr., then Acting Minister of Foreign Affairs of the Republic of Liberia, in accordance with Criminal Procedure Law, 1 L.C.L. Rev., tit. 2, § 8.5(2) (1973), forwarded the requisition of the United States Government to the Minister of Justice, and requested "that upon receipt of the necessary certified, authenticated and translated documents, the extradition process shall begin to have the above mentioned individuals [extradited] in accordance with the Extradition Treaty between the Republic of Liberia and the United States of America."

On 10 November 2005, the Monrovia City Magisterial Court, consistent with Criminal Procedure Law, 1 L.C.L. Rev., tit. 2, § 8.6 (1973), ordered warrants of arrest against the movants. The return of the ministerial officer of the magisterial court indicates that the movants were arrested on 11 November 2005. On the same day, the movants, in accordance with Criminal Procedure Law, 1 L.C.L. Rev., tit. 2, § 8.7 (1973), appeared before His Honor Milton D. Taylor, stipendiary magistrate, who informed them of the extraditable offense with which they were charged and of the demand made for their surrender and the consequences. Although the movants appeared with legal counsel, they were nevertheless advised of their right to retain legal counsel of their own selection, or have legal counsel assigned to represent them if they were financially unable to retain legal counsel, and that they would be provided with all the rights set forth in Criminal Procedure Law, 1 L.C.L. Rev., tit. 2, § 2.2 (3), (4) and (5) (1973).

Criminal Procedure Law, 1 L.C.L. Rev., tit. 2, § 2.2 (3), (4) and (5) (1973) provides:

"Adequate legal representation of accused persons.

"3. Facilities to obtain and consult with counsel of own selection to be furnished. At any time when an accused while in custody or on appearance before the court advises that he desires to obtain legal counsel of his own selection, upon his request he shall immediately be furnished, without cost to him, with available facilities to aid him in securing such counsel and shall be allowed reasonable time and opportunity to consult privately with such counsel before any further proceedings are had.

"4. Appointment of Defense Counsel for those financially unable to retain legal counsel. In all cases where the crimes charged are triable only in the Circuit Court, at any time when an accused advises that he is financially unable to retain legal counsel and that he desires to have legal counsel assigned to represent him, as soon after his request as practicable, he shall be brought before the court then having jurisdiction over him to decide whether the county Defense Counsel shall be assigned to represent him, and the accused shall be allowed reasonable time and opportunity to consult privately with such counsel before any further proceedings are had. Counsel so assigned shall serve without cost to the accused and he shall have free access to the accused, in private, at all reasonable hours while acting as legal counsel to him. The assignment of Defense Counsel shall not deprive the accused of the right to engage other legal counsel in substitution at any stage of the proceedings.

"5. Right to proceed without legal counsel; exception. An accused has a right to proceed without legal counsel and to be heard in person. However, whenever an accused appears in court without legal counsel and has been advised of his right to have legal counsel represent him, unless the court determines that he has understandably elected to proceed without such counsel, the court shall assign the county Defense Counsel to defend him."

At their first appearance before the magisterial court, counsels for movants requested the court, consistent with Criminal Procedure Law, 1 L.C.L. Rev., tit. 2, § 8.7 (1973), to fix a reasonable time during which to conduct a preliminary extradition hearing, and to admit the movants to bail since the offense for which their extradition is sought is bailable under the laws of Liberia. The magistrate granted the request for a preliminary extradition hearing and set 15 November 2005, at 10:00 a.m. as the date and time. The magistrate also granted the request of the movants to be admitted to

bail, and set the bail at one million, five hundred thousand United States dollars (\$1,500,000). The magistrate ordered that the movants be committed to jail at the Monrovia Central Prison pending the filing of the requisite bond which the court had set. Counsels for the movants excepted to the court's ruling ordering their commitment, and gave notice that they would take advantage of the statutes in such cases made and provided.

On the same day, counsels for the movants filed a petition for summary proceedings against Magistrate Taylor before His Honor James W. Zotaa, Resident Circuit Judge of the First Judicial Circuit, Montserrado County. Upon instruction of Judge Zotaa, the Clerk of Court cited Magistrate Taylor to a conference with Judge Zotaa on Tuesday, 15 November 2005, at 10:00 a.m. The letter also contained the following order:

"His Honor directs that you stay all further proceedings into the matter pending the hearing of the conference. You are to have the defendants released unto the custody of the Sheriff of this court pending the conference."

On 17 November 2005, the Clerk of the First Judicial Circuit, by directive of his Honor Judge Zotaa, informed Magistrate Taylor "to resume jurisdiction in the case out of which the petition for summary proceedings grew, and to have the [movants] released in keeping with law." Magistrate Taylor was informed, also, that the stay order was lifted.

The preliminary extradition hearing began on 3 December 2005 with two witnesses testifying for the State. On the resting of evidence by the State, the movants requested the court to dismiss the entire proceedings on the grounds that: (1) a copy of the Extradition Treaty had not been produced in court; (2) the writ upon which the movants were arrested is insufficient and defective because the writ does not set forth with certainty the nature and substance of the offense charged; (3) the evidence presented is insufficient to sustain a conviction; (4) Article 8 of the Extradition Treaty provides that neither of the high contracting parties shall be bound to deliver up its own citizens.

The State, resisting the movants' request, maintained essentially that: (1) the Extradition Treaty between the United States of America and Liberia having been ratified by the Legislature of Liberia, it is law which all courts are bound to take judicial notice of; (2) the movants should have plead the alleged insufficiency and defectiveness of the writ prior to the presentation of evidence by the State; (3) the

only grounds upon which a defendant in extradition proceedings may be discharged are where the person arrested is not the fugitive, the offense charged is not an extraditable offense, and the offense charged is a political offense; and (4) the guilt or innocence of the fugitive may not be inquired into in any extradition proceeding.

Following legal arguments, *pm et con*, Magistrate Taylor ruled, *inter alia*:

"In view of the aforesaid and in the mind of this court, the condition of the applicable provision of the extradition as contained in the requisition for Mr. Melee I. L. Kermue and Madam Wilma Dennis are well founded since indeed and in fact there have been no showing that the crime for which they are charged is a political offense; rather, same is in conformity with the relevant treaty and the statute laws of our country. We find, therefore, that the [requisition of the United States Government for the extradition of the defendants] is well founded. The bail bond approved by this court is hereby set aside, and the defendants, through the office of the Sheriff, [are ordered] turned over to the Ministry of Justice and a Certificate of Committal ordered issued by the Clerk of this Court to [be forwarded of the Minister of Foreign Affairs of the Republic of Liberia] through the Ministry of Justice. It is so ordered."

Counsels for the movants excepted to the ruling of Magistrate Taylor, and announced an appeal to the First Judicial Circuit Court, Montserrado County. Magistrate Taylor granted the appeal, to which the State excepted.

We observe next in the certified record to this Court a petition for the writ of habeas corpus which was filed by the movants, as petitioners, before His Honor Judge Zotaa on 5 December 2005. Magistrate Taylor and the Republic of Liberia, through the Ministry of Justice, were named as respondents. We take it that the basis for the petition was Criminal Procedure Law, 1 L.C.L. Rev., tit. 2, § 8.9 (1973), which provides:

"Upon a committal a fugitive has a right to apply for a writ of habeas corpus at any time before the expiration of the period specified in the applicable extradition arrangement during which no surrender of the fugitive may be made to the agent of the foreign State. Notice of the time and place of hearing thereof shall be given to the [Ministry] of Justice."

For the purpose of this opinion, we quote the petition for the writ of habeas corpus:

"Petitioners in the above entitled cause of action complain against the respondents and respectfully pray Your Honor to grant their petition and order their release from detention for the following legal and factual reasons:

"1. That petitioners are defendants in an extradition proceeding filed by co-respondent, Ministry of Justice, before the co-respondent magistrate.

"2. That upon regular notice of assignment, the extradition case was called on Saturday, December 3, 2005, and the preliminary hearing conducted. Following presentation of evidence by the Republic, the defense filed a motion to dismiss, listing several grounds. The court heard and denied the motion, and the defense excepted thereto.

"3. That the court then entertained final arguments of the extradition case and handed its ruling or final judgment. The court ruled granting extradition, that is holding the defendants to answer the crime charged. Also in the ruling, the court set aside defendants' criminal appearance bond even though there was no request for same nor was there any challenge thereto, and ordered the defendants remanded in custody pending extradition.

"4. Defendants excepted to the ruling/final judgment and appealed therefrom to the First Judicial Circuit Court. The magistrate noted the exception and granted the appeal as a matter of right. Defendants complain that in spite of the appeal having been granted, the court nevertheless issued a commitment for the incarceration of the defendants and they are now languishing in jail as their appeal is pending undetermined.

"5. Defendants say the conduct of the magistrate in enforcing his judgment and detaining the defendants after their appeal was granted and is pending undetermined is grossly irregular, illegal and violative of the Constitution and statutory laws and contrary to civilized behavior under the rule of law and all democratic tenets.

"6. Defendants say habeas corpus will lie to compel respondents to release petitioners and allow them to remain at large on bail pending the final determination of their appeal since their bail bond was never challenged by the Ministry of Justice and they did not violate the conditions of their bail bond.

"Wherefore and in view of the foregoing laws, facts and circumstances, petitioners/defendants most respectfully pray Your Honor to grant their petition and

order respondents herein to immediately release petitioners on the strength of their duly approved bail bond which remains unchallenged, and to proceed to *perfect* and hear the appeal of defendant and thereafter rule consistent with the facts presented and the law controlling and that Your Honor would grant unto petitioners any and all other and further relief as may be just, legal and equitable."

We do not find in the record certified to this Court that the State filed a resistance to the movants' petition for the writ of habeas corpus.

What we find next in the record certified to this Court is a hearing in the First Judicial Circuit Court, presided over by Judge Zotaa, of the appeal which was announced by counsels for the movants from the ruling of Magistrate Taylor. Judge Zotaa indicated in an interim ruling at the beginning of the hearing that the appeal would be heard *de novo*. The hearing began on 29 December 2005, with one witness, Morris Abraham Kaba, Assistant Minister and Special Assistant to the Minister of Justice, taking the stand on behalf of the State.

When the hearing resumed on 9 January 2006, the State raised the issue that the procedure which had been adopted by the court in conducting a *de novo* hearing, growing out of the appeal from Magistrate Taylor's finding that the movants were extraditable and ordering a warrant of committal, was irregular, and that the proceedings up to that point should be ignored and stricken from the records, and that the petition for the writ of habeas corpus be heard.

Counsel for the movants resisted the application of the State, maintaining essentially that the State was guilty of waiver and lashes.

In denying the application of the State, Judge Zotaa ruled, *inter alia*:

"The ongoing proceedings of this court in the hearing of the appeal has nothing to do with the habeas corpus. What this court is now considering is whether or not the decision of the magistrate to have the defendants extradited is in keeping with law or not, so that this court will order the cancellation or the reversal of that judgment. . . ."

Judge Zotaa ordered the proceedings proceeded with. The State noted exceptions to the ruling, and gave notice that it would take advantage of the statutes.

A second witness, A. Darius Dillion, Special Assistant to the Solicitor General of the Republic of Liberia, testified for the State. On 10 January 2006, the State rested the production of evidence.

On the resting of evidence by the State, the defense waived the production of evidence, and in submitting the hearing for argument maintained that (1) under Article XIII of the Extradition Treaty between the United States of America and Liberia, the Treaty expired in 1944; (2) under Article VIII of the Treaty, "neither of the High Contracting Parties shall be bound to deliver up its own citizens. .

The State, in a three-count resistance spread on the records of the court, maintained that: (1) the Extradition Treaty between the United States of America and Liberia did not expire in 1944, and that it was in full force and effect; (2) under Article VIII of the Treaty, the decision that "neither of the High Contracting Parties is bound to deliver up its own citizens" is a political decision the Government makes after the courts have decided upon the request for extradition. The State prayed that the Certificate of Committal issued by Magistrate Taylor be affirmed, and that the movants be committed to jail pending the Certificate of Surrender from the Ministry of Foreign Affairs.

On 12 January 2006, Judge Zotaa rendered the following ruling.

"This case is before us on an appeal announced by the two defendants in this case from the decision of His Honor Milton D. Taylor, Stipendiary Magistrate of the Monrovia City Court ordering the Committal for Extradition of the defendants. Upon granting the appeal, the clerk of said court forwarded to this court all the records, including the writ and the evidence taken during the preliminary hearing of the extradition proceedings. Records before us reveal that based upon the request of the United States Government, through its embassy accredited near Monrovia and through the Ministry of Foreign Affairs for the Republic of Liberia, for the extradition of the two defendants, the Ministry of Justice, through its prosecuting attorneys, instituted these actions at the said court. The defendants requested the preliminary hearing of the said case, which was [had] and the magistrate ordered the committal for extradition of the two defendants to face trial in an Ohio Court for the crime specified in the Indictment. The State, in support of its case, submitted before this court [a] series of documents which *were* marked and confirmed. P/1, in bulk, are documents including a letter from the Minister of Foreign Affairs of Liberia to the [Minister] of Justice submitting the extradition request. P/2, in bulk, includes a letter over the signature of Ms. Condoleezza Rice, [Secretary of State] of the [United

States, and an Indictment. The third document submitted in evidence is an Extradition Treaty between the [United States of America and Liberia], Treaty Series no. 955. After the court entertained arguments from all the parties, this court as required by law will now consider whether the decision of the magistrate to commit the defendants for extradition is in keeping with law.

"This court says that it will concern itself only with the basis upon which an extradition between two countries of their citizens may occur, which basis in the mind of the court is the Extradition Treaty. The court says that it shall further narrow itself to two provisions of this Treaty to consider judicially whether the Treaty may be used as a basis to extradite Liberian citizens back to the [United States] where they are alleged to have committed a crime.

"Article VIII of the Treaty states: 'Under the stipulations of this Treaty, neither of the High Contracting Parties shall be bound to deliver up its own citizens except in cases where such citizenship has been obtained after the perpetration of the crime for which extradition is sought. . . *In the instant case, the two defendants are and have since been citizens of the Republic of Liberia, and that there is no evidence to show that they have just obtained citizenship after their alleged commission of the crime. The court has found that the defendants have been citizens prior to their alleged commission of the crime from the documents submitted by the United States Government itself. The wordings of Article VIII, under international law, does not bound the two High Contracting Parties to deliver up their citizens unto the jurisdiction of the other. The court says that any extradition of citizens under such condition must have the blessing of the judicial process.

"The other provision that concerns this court is Article XIII which holds, among other things, that the Treaty shall remain in force for five years and shall be terminated by any party upon notice given one year before its expiry and if such notice is given after the five years, the Treaty shall expire at the end of that particular one year. This Treaty was ratified in 1939, and so this court, from the provision of Article XIII, understands that the Treaty came to an end in 1944. The court also understands that one year notice before to Treaty expiry to mean that any of the parties had the right to terminate the Treaty in 1944 after giving a year's notice. The court also takes it that if there be no notice prior to the expiry of the [Extradition Treaty] in five years, the Treaty comes to an end after the notice that is given after the five years. What is clear to the mind of this court is that this Treaty was intended for five years, and the longest it could have existed was for six years. No agreement, including a Treaty, can exist in perpetuity. All treaties under international law have to

have a definite duration. The definite duration of this Treaty, as intended by the parties, was actually six years, taking into consideration the notice which was intended to come after the five years, if there be one. That is no evidence that notice was given by either of the parties prior to the five years duration or after the intended five year duration. This court says that given the fact that treaties, like all other contracts, must have a definite duration, the court says that this contract or Treaty came to an end, by operation of law, in 1944.

"These proceedings are a novelty in our jurisdiction. There is no evidence as far as this court has researched, that the both contracting parties to this Treaty had ever sent any of its citizens to be tried in another jurisdiction. This court therefore says that the Treaty of Extradition, series no. 955, does not really have any full force and effect.

"Wherefore and in view of the foregoing, this court hereby declares the ruling of the magistrate committing the two defendants for extradition to be illegal, and null and void, and such decision is hereby set aside. The entire extradition proceedings are also hereby dismissed, and the defendants are so discharged."

To this ruling of Judge Zotaa, the State noted exceptions, and announced an appeal to this Honorable Court. The appeal is on a bill of exceptions containing seven counts.

"1. That Your Honor erred when you ruled that there must be a regular appeal in an extradition proceedings held before a magistrate or justice of the peace court .

"2. That Your Honor erred when you ruled that after the magistrate found that the fugitives should be extradited, he was in error when he set the bond aside and ordered them committed to jail.

"3. That Your Honor erred when you ruled that the State was not entitled to an appeal following an adverse ruling in a habeas corpus proceeding as provided for in extradition proceedings.

"4. That Your Honor erred and violated the statute when Your Honor conducted preliminary hearings in an extradition proceedings.

"5. That Your Honor grossly erred when you ruled that according to Article XIII of the Treaty, same had expired since 1944.

"6. That Your Honor erred when you ruled that Article VIII precludes a High Contracting Party from sending its citizens to a requesting State.

"7. That all of Your Honor's erroneous rulings have been excepted to as per the records of this case."

At the outset, we wish to state that this matter was most irregularly and improperly handled by His Honor Judge James W. Zotaa, Resident Circuit Judge of the First Judicial Circuit, Montserrado County.

Firstly, in giving orders on the filing of the petition for summary proceedings against Magistrate Milton D. Taylor, Judge Zotaa gave the following directive:

"His Honor directs that you stay all further proceedings into the matter pending the hearing of the conference. You are to have the defendants released unto the custody of the Sheriff of this Court pending the conference."

This directive was unlawful and illegal, for it is in violation of rule 33 of the Circuit Court Rules as Revised (1999). While Judiciary Law, L.C.L. Rev., tit. 17, § 3.3 (1972), on Power of Circuit Judges to issue writs of injunction and writs for summary proceedings in nature of prohibition, provides that "[t]he circuit judges shall have the power, authority and jurisdiction, exclusively, to issue or order the issuance of writs of injunction, and writs for summary proceedings in the nature of prohibition addressed to inferior courts and their officers in exercise or aid of their appellate jurisdiction over them, rule 33 of the Circuit Court Rules as Revised (1999) provides that "[u]pon the application of a party by petition for summary proceedings against a magistrate or justice of the peace, the judge shall cite the parties to a conference *prior to issuing the writ which contains a stay order*" (emphasis supplied).

Secondly, there is no provision under the Criminal Procedure Law, 1 L.C.L. Rev., tit. 2 (1973) for an appeal from the finding and ruling of a magistrate or justice of the peace ordering the committal of a fugitive following an extradition hearing. The only remedy available to the fugitive is an application for the writ of habeas corpus. Criminal Procedure Law, 1 L.C.L. Rev., tit. 2, § 8.9 (1973) provides:

"Upon a committal a fugitive has a right to apply for a writ of habeas corpus at any time before the expiration of the period specified in the applicable extradition arrangement during which no surrender of the fugitive may be made to the agent of

the foreign State. Notice of the time and place of hearing thereof shall be given to the [Ministry] of Justice."

How Judge Zotaa elected to preside over an appeal from the finding and ruling of Magistrate Taylor is anybody's guess, especially when this irregular procedure was brought to his attention by the State during the court's sitting on 9 January 2006. We know, definitely, that it was not based on provisions of Criminal Procedure Law, 1 L.C.L. Rev., tit. 2 (1973).

Because there is no provision under Criminal Procedure Law, 1 L.C.L. Rev., tit. 2 (1973) providing for an appeal from the finding and ruling of a magistrate or justice of the peace ordering the committal of a fugitive following an extradition hearing, we hold that the entire proceedings conducted by Judge Zotaa, including his ruling dated 12 January 2006, were null and void *ab initio*. They are hereby set aside.

We shall address three issues, for future guidance, which were raised before this Court.

(1) Whether this Court has jurisdiction over the appeal announced by the State from the final judgment of Judge James W. Zotaa?

(2) Whether a magistrate, a justice of the peace or a circuit court judge has authority to pass upon the constitutionality or validity of a treaty between the Government of Liberia and a foreign sovereign?

(3) Whether the Extradition Treaty concluded and signed by the United States of America and Liberia on 1 November in 1937 has expired?

On 22 June 2007, the movants filed before this Court the following motion to dismiss the appeal which had been announced by the State from the ruling of Judge Zotaa dated 12 January 2006.

"1. That this Court lacks jurisdiction over this appeal because the statute clearly states the grounds upon which the State can appeal in a criminal case, namely, from a ruling made on a motion to dismiss the indictment, and from a ruling made on a judgment of acquittal.

"2. Appellees/movants submit that the law having specified these two grounds upon which the Republic can appeal, the appellant has no legal authority to create and use any other grounds not created by the Legislature *upon* which to base an appeal.

"Wherefore, appellees/movants pray this Honorable Court to dismiss the appeal for lack of jurisdiction over the subject matter of the appeal, and to further grant unto appellees/movants such relief justice and right may demand in the premises."

The movants have relied on Criminal Procedure Law, 1 L.C.L. Rev., tit. 2, § 24.3 (1973) which makes provision for the right of appeal by the State. The two grounds provided for an appeal in that section are: (1) from an order granting a motion by the defendant to dismiss the indictment; and (2) from an order granting a motion for judgment of acquittal.

The issue raised by the movants, however, is academic, for it is not relevant to this case. Had Judge Zotaa conducted the proceedings in accordance with Criminal Procedure Law, 1 L.C.L. Rev., tit. 2, § 8.9 (1973), and had the movants not encouraged the Judge to conduct the proceedings in such irregular manner, the State, in a habeas corpus proceeding, would have been entitled to an appeal from the ruling of Judge Zotaa.

Civil Procedure Law, 1 L.C.L. Rev., tit. 1, § 16.51 (1973) defines the writ of habeas corpus.

"The writ of habeas corpus is a *writ directed to the sheriff* or any other person (hereinafter referred to as the 'defendant') who has the custody of a person (hereinafter referred to as the 'prisoner'), directing the defendant to bring the body of the prisoner before the court or judge so that inquiry may be made into the cause of the confinement or detention and so that the discharge of the prisoner may be ordered if it appears proper to do so" (emphasis supplied).

Civil Procedure Law, 1 L.C.L. Rev., tit. 1, § 16.69 (1973) provides for an appeal from a judgment in a habeas corpus proceeding.

"An appeal from the judgment in a habeas corpus proceeding shall not act as a supersedeas or suspension of such judgment."

We take note of Civil Procedure Law, 1 L.C.L. Rev., tit. 1, § 16.51 (1973), which defines the writ of habeas corpus, that it is directed *primarily* to the sheriff, an official

of the State. We take note, also, of Civil Procedure Law, 1 L.C.L. Rev., tit. 1, § 16.69 (1973), which provides that an appeal may be taken from the judgment in a habeas corpus proceeding, but that the appeal shall not act as a supersedeas or suspension of the judgment.

If the "defendant" in a habeas corpus proceeding is the sheriff who had custody of the prisoner, rather than "any other person," the State, on behalf of the sheriff, would be entitled to an appeal to the Supreme Court. How would this right of the State be exercised were this Court to accept the argument of the movants? The more lawyers appearing before our courts, and especially the Supreme Court, understand, comprehend and become *au courant* with the entire procedures obtaining in our jurisdiction, the better they would render those services to their clients for which they have been retained and paid.

We hold that this Court has jurisdiction over the appeal announced by the State from the ruling of Judge Zotaa dated 12 January 2006, which we have decided was null and void *ab initio*.

We address next the issue whether a magistrate, a justice of the peace or a Circuit Court Judge has authority to pass upon the constitutionality or validity of a treaty between the Government of Liberia and a foreign sovereign?

Article 2 of the Liberian Constitution (1986) provides:

"This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic.

"Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. *The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional*" (emphasis supplied).

We hold that under Article 2 of the Liberian Constitution (1986), only the Supreme Court sitting *en banc* is empowered to declare a Treaty between Liberia and a foreign sovereign unconstitutional or of no effect, and that Judge Zotaa was without jurisdiction to decide on the validity of the Treaty.

In a long line of opinions, this Court has held that jurisdiction over the subject matter may be questioned at any time up to final judgment. *Hill v. Republic*, 2 LLR 517, 522 (1925); *Compagnie des Cables Sud-Americaine v. Johnson*, 11 LLR 264, 268-270 (1952); *Cooper v. Alamendine*, 20 LLR 416, 419-421 (1971). We affirm the holdings in those cases.

We address lastly the issue whether the Extradition Treaty concluded and signed by the United States of America and Liberia on 1 November in 1937 has expired?

Article XIII of the Extradition Treaty provides:

"The present Treaty shall remain in force for a period of five years, and in case neither of the High Contracting Parties shall have given notice one year before the expiration of that period of its intention to terminate the treaty, it shall continue in force until the expiration of one year from the date on which such notice of termination shall be given by either of the High Contracting Parties."

There is no indication that either of the High Contracting Parties has given notice of its intention to terminate the Treaty. In the absence of such notice, we hold that the Extradition Treaty between the United States of America and Liberia concluded and signed on 1 November 1937 has not expired, and is in full force and effect.

In view of the foregoing, the motion to dismiss is hereby denied. The ruling of His Honor Judge James W. Zotaa dated 12 January 2006 is declared null and *void ab initio* and reversed. The Clerk of this Court is hereby ordered to send a mandate to the Circuit Court for the First Judicial Circuit, Criminal Assizes "A," ordering the judge presiding to resume jurisdiction over this matter and to execute the Certificate of Committal of His Honor Milton D. Taylor, Stipendiary Magistrate, Monrovia City Court, dated 3 December 2005. The Clerk of this Court is further ordered to include in the mandate to the Circuit Court that it send a copy of the Certificate of Committal to the Minister of Foreign Affairs and to the Ministry of Justice. It is so ordered.

Judgment reversed.